

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>Criminal No. 91-17-B-H</b>
	)	<b>(Civil No. 96-8-B-H)</b>
<b>RONALD J. PLUMMER,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED DECISION ON DEFENDANT'S MOTION  
FOR COLLATERAL RELIEF UNDER 28 U.S.C. § 2255**

Ronald J. Plummer moves this court to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Plummer was convicted of carrying or using a firearm during a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). He bases this motion on the United States Supreme Court’s recent decision in *Bailey v. United States*, 133 L.Ed.2d 472 (1995). I reject Plummer’s argument and recommend that his motion be denied.

Plummer pleaded guilty to distribution of marijuana in violation of 21 U.S.C. § 841(a)(1) and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), but pleaded not guilty to using or carrying a firearm during a drug trafficking offense. Judgment in a Criminal Case (“Judgment”) (Docket No. 6) at 1. The evidence at trial showed that on February 27, 1991 Plummer sold approximately one-quarter pound of marijuana while he was seated in his automobile. Transcript of Trial, *United States v. Plummer*, Crim. No. 91-17-B (D. Me. May 31, 1991) at 5. There was a firearm stuck in between the vehicle’s seat back and seat cushion, where it was visible and accessible during the drug transaction. *Id.* at 103-04. After a bench trial the court found that Plummer had carried a firearm in relation to a drug trafficking crime. *Id.* at 104. On November 8,

1991 the court sentenced Plummer to a six-month prison term on the marijuana distribution and felon-in-possession charges, and a consecutive five-year prison term on the section 924(c)(1) charge. Judgment at 2. The court also imposed a four-year period of supervised release. *Id.* at 3.

Plummer challenges the sentence imposed pursuant to 18 U.S.C. § 924(c)(1), which provides in relevant part: “Whoever, during and in relation to any . . . drug trafficking crime . . . uses or carries a firearm, shall, in addition to the punishment provided for such . . . drug trafficking crime, be sentenced to imprisonment for five years . . . .” Plummer’s reliance on *Bailey* is misplaced, because the trial court found him guilty under the “carry” prong of section 924(c)(1), whereas *Bailey* addressed only the “use” prong. *See Bailey*, 133 L.Ed.2d at 484 (“use” of a firearm under 18 U.S.C. § 924(c) denotes “active employment” of a firearm).

Plummer conceded on direct appeal that “the presence of the gun in his vehicle was sufficient to establish the second element of the crime -- that he ‘carrie[d] a firearm.’” *United States v. Plummer*, 964 F.2d 1251, 1253, 1255 (1st Cir.) (rejecting Plummer’s argument that his carrying was not “in relation to” a drug trafficking crime), *cert. denied*, 506 U.S. 926 (1992). In any event, the trial court properly found that, by causing the firearm to be transported in his vehicle where it was visible and accessible during the drug transaction, Plummer carried a firearm within the meaning of 18 U.S.C. § 924(c)(1). *See United States v. Ramirez-Ferrer*, 82 F.3d 1149, 1154 (1st Cir. 1996) (causing gun to be transported on boat during drug trafficking crime, within easy reach of one defendant, satisfied “carry” prong of section 924(c)); *United States v. Nicholson*, 983 F.2d 983, 986, 990 (10th Cir. 1993) (loaded revolver under front seat of defendant’s car was within easy reach, and thus supported conviction under the “carry” prong of section 924(c)(1)).

For the foregoing reasons, I recommend that the petitioner’s motion to vacate, set aside or correct his sentence be ***DENIED***.

**NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated this 20th day of June, 1996.*

---

*David M. Cohen  
United States Magistrate Judge*